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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

In re Silver Wheaton Corp.  
Securities Litigation

Master File No. 2:15-cv-05146-  
CAS(JEMx)  
c/w: 2:15-cv-05173-CAS(JEMx)

**REPLY DECLARATION OF PAUL  
MILLER IN FURTHER SUPPORT OF  
PLAINTIFFS' MOTION FOR LEAVE  
TO (A) MODIFY THE SHCEDULING  
ORDER AND (B) FOR LEAVE TO  
FILE A SECOND AMENDED  
COMPLAINT**

**CLASS ACTION**

Judge: Hon. Christina A. Snyder  
Hearing Date: March 26, 2018  
Time: 10 a.m.  
Complaint Filed: July 8, 2015  
Discovery Cut-Off: March 29, 2018  
Pretrial Conference Date:  
February 25, 2019  
Trial Date: March 26, 2019

1           Paul Miller, pursuant to 28 U.S.C. §1746, declares

2           1. I am an attorney at Branch McMaster LLP, Canadian counsel to  
 3 Plaintiffs/Class Representatives Joe Elek, Thomas Bartsch, Larry Brandow, Diana  
 4 Choi, Benjamin Potaracke, Jedrzej Borowczyk, and Charles Remmel (together,  
 5 “Plaintiffs”).

6           2. I was admitted to the Washington State Bar in 1998, and to the British  
 7 Columbia Bar in 2007. I have been practicing law in British Columbia since 2007. I  
 8 am currently a member of both the British Columbia and Washington bars.

9           3. I have personal knowledge of the facts set out below.

10          4. Branch McMaster was retained by Plaintiffs through The Rosen Law  
 11 Firm, P.A. (“Rosen”) in July 2016. During the period from July 2016 through  
 12 November 2016, I advised Rosen on the requirements of British Columbia  
 13 discovery as well as the scope of their requests for production of documents to  
 14 Deloitte LLP (Canada) (“Deloitte”) and PricewaterhouseCoopers LLP (Canada)  
 (“PwC”).

15          5. I also drafted portions of the Petition (and its supporting materials) to  
 16 the Court seeking to enforce letters rogatory directed to Deloitte and PwC (the  
 17 “Canadian Application”), and advised Rosen on drafting the remainder. My firm  
 18 filed the Canadian Application on April 28, 2017. The Canadian Application  
 19 requested both production of documents and a pre-trial examination, the British  
 20 Columbia equivalent of a deposition of a non-party.

21          6. At the direction of Rosen, I personally negotiated enforcement of the  
 22 Canadian Application.

23          7. By May 11, 2017 Deloitte and PwC had advised me through their  
 24 separate counsel that they were aware of the matter. By May 12, 2017, counsel for  
 25 both Deloitte and PwC had indicated that they might need additional time to  
 26 respond to the Canadian Application, which I subsequently agreed to provide them.

27          8. On May 25, 2017, I held a conference call with counsel for Deloitte,  
 28 PwC, and Defendants Silver Wheaton Corp., Randy Smallwood, Gary Brown, and

1 Peter Barnes (“Defendants”, and with Deloitte and PwC, the “Respondents”) to  
 2 discuss the Canadian Application. On this call, we discussed the possibility of a  
 3 consent order. The Respondents’ counsel said that they each would seek direction  
 4 from their respective clients. Nevertheless, the Respondents raised a number of  
 5 preliminary objections to the relief I was seeking in the Canadian Application on  
 6 behalf of the Plaintiffs.

7 9. In British Columbia, a hearing of 2 hours or less can be scheduled on  
 8 the regular application calendar by a party on any day the court is in session without  
 9 having to secure a specific date from the court. If the parties anticipate that they  
 10 will require more than 2 hours, they must request a hearing date from the Court in  
 11 which the court has availability for the time period required. Based on the  
 12 anticipated time needed for the Respondents to present oral argument to the court in  
 13 responding to the Canadian Application, I acceded to the Respondents’ position that  
 14 more than 2 hours was need for the hearing and that I would request a full day  
 15 hearing from the Court. On June 13, 2017, I was advised that we had obtained a  
 16 hearing date of August 10, 2017, the first available date in the calendars for the  
 17 court and each counsel.

18 10. From June 5 to 8, 2017, I conferred further with counsel for the  
 19 Respondents concerning their objections. Counsel for all three Respondents raised  
 20 objections to the scope of the information sought in the Canadian Application. In  
 21 addition, Deloitte objected to submitting to an examination, and PwC objected to  
 22 submitting to more than a one-day examination without further information for the  
 23 necessity of a second day. Finally, Deloitte and PwC wanted to have all of their  
 24 reasonably incurred costs of compliance reimbursed, including attorneys’ fees, and  
 25 the witnesses’ preparation and examination attendance time, at their regular hourly  
 26 rates.

27 11. I continued to confer with counsel for Respondents throughout June  
 28 and July 2017 in anticipation of the hearing. As part of my discussions with counsel  
 for PwC and Deloitte, on June 22, 2017 I requested estimates for costs which PwC

1 and Deloitte would seek reimbursement at the hearing. I reiterated that request on  
 2 July 7, 2017. On or about July 27, 2017, PwC's counsel provided an estimate of  
 3 CDN\$50,000 to \$60,000 in relation to documents and an examination. On August  
 4 3, 2017, Deloitte's counsel provided an estimate of CDN\$35,000, plus taxes and  
 5 disbursements, solely to produce documents. Deloitte's counsel did not provide an  
 6 estimate of costs for an examination at that time.

7 12. By June 22, 2017, I also received confirmation from the Respondents  
 8 that they would not consent to an order but would only agree to not oppose an order  
 9 provided it contained language agreeable to them. Deloitte and PwC did not want to  
 10 be seen consenting to any order that required production of client documents.

11 13. No further progress of any significance before the hearing was made  
 12 with Deloitte regarding the costs to be reimbursed to Deloitte. Deloitte refused to  
 13 agree to any reimbursement cap.

14 14. I was able to reach agreement with PwC counsel prior to the hearing  
 15 on the issue of costs to be reimbursed to PwC.

16 15. I argued the August 10, 2017 hearing before Justice Milman, a judge  
 17 of the British Columbia Supreme Court, who reserved decision until August 17,  
 18 2017.

19 16. On August 17, 2017, Justice Milman delivered his oral reasons for  
 20 judgment which, among other things, imposed a cap of CDN\$12,000 on Deloitte's  
 21 recovery of its costs associated with the production of documents, or about a third  
 22 of what Deloitte requested. Justice Milman also ordered Deloitte to be made  
 23 available for examination and imposed a cap of CDN\$10,000 for reimbursement of  
 24 Deloitte's preparation and attendance at the examination. Plaintiffs were entitled to  
 25 receive Deloitte's documents by October 6, 2017.

26 17. A true and correct copy of the entered written order embodying Justice  
 27 Milman's oral reasons for judgment is attached as Exhibit 1 to this Declaration.

28 18. On August 25, 2017, Deloitte's counsel emailed me a list of suggested  
 29 search terms to use to search for electronic documents ordered to be produced by

1 Justice Milman. Deloitte's email requested: "Could you please confirm that these  
 2 search terms are agreeable and, if not, what further search terms are required." A  
 3 true and correct copy of Deloitte's counsel's email is attached as Exhibit 2 to this  
 4 Declaration.

5 19. On August 28, 2017, I conferred with Deloitte's counsel concerning  
 6 Deloitte's request to employ electronic search terms rather than review entire  
 7 relevant sections of Deloitte's audit working papers. Deloitte's counsel indicated  
 8 that Deloitte told her it was not possible to pick out relevant sections to review  
 9 because the audit working papers were not organized in a manner that would assist  
 in such a review.

10 20. On August 30, 2017, I responded to Deloitte's counsel's email of  
 11 August 25, 2017 regarding the search terms. My email attached a list showing  
 12 revised and additional search terms. I also stated in my email:

13 As mentioned below and in our telephone conversation that followed, my  
 14 clients' review and revision of the search terms was made in an effort to  
 15 merely assist Deloitte in its production of documents in compliance with the  
 16 court's order; but my clients in no way agree that the use of the terms in this  
 17 list (including the use of the exclusionary names of counsel) by Deloitte  
 18 necessarily satisfies its obligations in complying with the order. These are  
 Deloitte's documents and it is in the best position to determine which terms  
 will locate all that is required under the order, along with any other further  
 necessary steps that may be required.

19 21. A true and correct copy of my August 30, 2017 email and its  
 20 attachment is attached as Exhibit 3 to this Declaration.

21 22. On October 6, 2017, Deloitte delivered its first production of  
 22 documents under the court's order via an internet link that permitted the documents  
 23 to be downloaded (the "October Production").

24 23. At no time prior to Deloitte's October Production did Deloitte or its  
 25 counsel inform me that Deloitte was not employing the revised and additional  
 26 search terms that I sent to Plaintiffs on August 30, 2017.

1       24. On October 21, 2017, I sent a letter to Deloitte calling its attention to  
2 significant gaps of documents in the October Production. A true and correct copy of  
3 my October 21, 2017 letter is attached as Exhibit 4 to this Declaration.

4       25. After further communication with Deloitte's counsel regarding the  
5 incompleteness of the October Production, I requested a printout of the electronic  
6 searches that Deloitte employed to locate the documents required under the court  
order.

7       26. On October 25, 2017, I received an email from Deloitte's counsel  
8 listing the search terms that Deloitte had employed to generate its October  
9 Production. A true and correct copy of Deloitte's counsel's email is attached as  
10 Exhibit 5 to this Declaration. This list does not include the revised and additional  
11 search terms that I sent to Deloitte's counsel on August 30, 2017. The October 25,  
12 2017 email was the first time Deloitte or its counsel had revealed to me that  
13 Deloitte had not employed the search terms that I sent on August 30, 2017.

14       27. I had further communications with Deloitte's counsel about Deloitte  
15 expanding its review of documents in order to produce additional documents that  
16 were required under the scope of the court order.

17       28. Being dissatisfied with the delay that was occurring in Deloitte's  
18 production of additional documents, I sent a letter to Deloitte's counsel on  
19 December 7, 2017, in which I expressed my dissatisfaction and advised that  
20 Plaintiffs would return to court if Deloitte did not produce additional documents by  
21 December 22, 2017. A true and correct copy of my December 7, 2017 letter is  
22 attached as Exhibit 6 to this Declaration.

23 I declare under penalty of perjury under the laws of the United States that the  
24 foregoing is true and correct.

25 Dated: March 12, 2018



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Paul Miller, Esq.

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